IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3959 of 2005
Date of Decision: 15.12.2006

Rajinder Singh ...Appellants

Versus

Piara Singh and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri M.S. Lubana, Advocate, for the appellant.

Shri Arvind Mittal, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for specific performance of an agreement of sale dated 10.5.1995 was dismissed.

The plaintiff has sought specific performance of an agreement of sale dated 10.5.1995 by way of the present suit filed on 16.9.1998. It is the case of the plaintiff that the defendants agreed to sell the suit land measuring 9 bighas 1 biswa for a sum of Rs.3,75,000/-. A sum of Rs.1,50,000/- was paid as earnest money at the time of execution of the agreement and the sale deed was to be executed on payment of the balance amount on or before 15.5.1998. As the defendant has failed to execute the

same deed, the plaintiff sought specific performance of the agreement by virtue of the present suit.

In the written statement, it is the stand of the defendant that the suit for specific performance is not maintainable as the property has been sold to defendant No.2 in the sum of Rs.2,85,000/- and that the agreement in question was executed by the defendant in his own hand acknowledging receipt of Rs.50,000/- as earnest money. The sale deed was to be executed on or before 15.5.1996 but the plaintiff has mischievously interpolated the earnest money as Rs.1,50,000/- instead of Rs.50,000/- and also altered the date of execution of sale deed by interpolation from 15.5.1996 to 15.5.1998. Therefore, it is alleged that the agreement in question was a forged and fabricated document. To prove the said agreement, the plaintiff has appeared as his own witness and has examined one of the attesting witnesses as PW2 Rattan Singh. On the other hand, defendant No.1 was examined as DW1 and defendant No.2 as DW2. The defendants also examined Inderjit Singh, handwriting and finger prints expert. The defendants also examined DW3 Gulzar Singh, attesting witness of sale deed dated 6.10.1998 in favour of defendant No.2.

The learned trial Court has held that as per the report of the expert digit 1 has been added later on in front of the original figure of Rs.50,000/- with a different ball pen having light violet tinge and shade, sheen or gloss and having light blue colour whereas the ball pen with which the figure 50,000 and the rest of the words have been written is of dark blue colour having dark bluish tinge or shade, gloss. The pen with which the original figure 50,000 has been written is a defective pen as it leaves indentation while writing as the ink is not properly liberated by the

ball whereas no such defects are present in the digit 1. The digit 1 has been added by some other person than the one who wrote the other digit 1 in the agreement. It was further found that the report of the expert further mentions that after examination of the date 15.5.98, it was revealed that digit 6 has been deliberately changed to 8 by addition of an upper curved stroke with a different ball pen having light violet tinge and shade, sheen or gloss and having light blue colour whereas the ball pen with which the date 15.5.98 and the rest of the words have been written is of dark blue colour having dark bluish tinge or shade, sheen or gloss. It was further found that even by seeing the agreement with naked eyes, it is clear that the date 15.5.96 has been changed to 15.5.98 and that the plaintiff has not examined any expert in rebuttal. Thus, it was found that in view of the material alterations made in the agreement to sell, the plaintiff is not entitled to the decree for specific performance of the agreement. Such finding has been affirmed in appeal as well.

Learned counsel for the appellant has vehemently argued that alteration in the date of the performance of the agreement which now reads as 15.5.98, is wholly inconsequential as the suit for specific performance has been filed in September, 1998, which is within the period of limitation from the date of the execution of the agreement of sale itself. Still further, Rattan Singh examined by the plaintiff as PW2 is brother of the defendants. Rattan Singh appearing as a witness has supported the execution of the agreement and, therefore, the finding recorded by the Courts below is not sustainable.

Controverting the said argument, learned counsel for the respondents has argued that the plaintiff has not controverted the

stand of the defendants in respect of alteration of the agreement by filing the replication. The plaintiff has not examined any handwriting expert as well, to prove that there is no alteration in the agreement to sell.

Both the Courts have recorded a concurrent finding of fact that the agreement of sale has been materially altered in respect of earnest money as well as the time for performance of the agreement. Both the Courts have recorded concurrent finding of fact on the basis of appreciation of evidence including statement of PW2 Rattan Singh and that of Shri Inderjit Singh, handwriting expert that the agreement stands interpolated. The said finding was not seriously disputed by the appellant as well.

It was agreed that the alterations were made at the time of the execution of the agreement and such fact stands proved from the testimony of the plaintiff and his attesting witness. The argument raised is based upon question of fact. Both the Courts have considered the entire evidence, including the statement of PW2 Rattan Singh and that of the appellant Rajinder Singh, to return a finding that the agreement is interpolated. There is nothing on record that such alterations were made at the time of execution of agreement. The alterations are not countersigned by any of the parties, nor any evidence has been led to the effect that alterations were made at the time of agreement. The agreement is hand written by defendant and it has been found that handwriting in respect of figure 1 is different in the figure 1,50,000/-.

In view of the said findings based on appreciation of evidence, the plaintiff cannot be said to be entitled to any decree for specific performance of the agreement.

No substantial question of law arises for consideration as findings of fact alone are sought to be disputed in second appeal.

Hence, the present appeal is dismissed in limine.

December 15, 2006 (HEMANT GUPTA)
ds JUDGE